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**UNITED STATES DISTRICT COURT**

**DISTRICT OF ARIZONA**

BBK Tobacco & Foods, LLP, an Arizona  
limited liability partnership, d/b/a HBI  
International,

Plaintiff,

vs.

Rodawg, LLC, a Florida limited liability  
company,

Defendant.

Case No.

**COMPLAINT**

**(Jury Trial Demanded)**

**DESCRIPTION OF ACTION**

1. This is an action by BBK Tobacco & Foods, LLP dba HBI International (“HBI International”) against Rodawg, LLC (“Rodawg”) for trademark infringement and unfair competition. HBI International seeks injunctive relief and damages for trademark infringement under the Lanham Act, 15 U.S.C. §1114 and for unfair competition under 15 U.S.C. § 1125(a) and the common law of the State of Arizona.

**THE PARTIES**

2. Plaintiff BBK Tobacco & Foods, LLP is an Arizona limited liability partnership. It is incorporated in Arizona, has its principal place of business in Arizona, and does business under the name “HBI International.”

1           3. Defendant Rodawg is organized under the laws of the State of Florida and  
2 has its principal place of business in Florida.

3                                   **JURISDICTION AND VENUE**

4           4. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121 and  
5 28 U.S.C. §§ 1331, 1332, 1338, and 1367. This case primarily involves a federal  
6 question, complete diversity of citizenship exists, and the amount in controversy exceeds  
7 \$75,000.

8           5. Venue in this judicial district is appropriate pursuant to 28 U.S.C. §  
9 1391(a).

10          6. Defendant is subject to general and specific jurisdiction of this Court by  
11 virtue of their substantial contacts with Arizona, including, but not limited to, doing  
12 business in Arizona, marketing its products to consumers in Arizona, and operating an  
13 active website through which consumers in Arizona can purchase Rodawg's infringing  
14 products.

15                                   **COMMON ALLEGATIONS**

16          1. HBI International is in the business of designing, marketing, and selling  
17 tobacco-related products, including loose tobacco, rolling papers, and cigars.

18          2. In 2002, HBI International launched a new brand of rolling paper, called  
19 "RAW." In 2005, HBI International began mass marketing "RAW." HBI International's  
20 line of RAW products has since grown to include cotton filters and pre-rolled cigarette  
21 papers. HBI International sold all these products before defendant engaged in its  
22 improper acts, as described below.

23          3. Since mass marketing RAW-branded products in 2005, HBI International  
24 has continuously used the RAW name and mark in connection with its RAW line of  
25 products in various advertising and promotional materials.

26          4. HBI International owns various RAW-related copyrights, including  
27 TX0006539144 and TX0006626247, and federal trademark registration for "RAW," No.  
28

1 2989221 and 4074036, “SUPERNATURAL RAW,” No. 4041076, as well as the pending  
2 application for “RAW ARTESANO,” Serial No. 85615862.

3 5. HBI International has spent significant sums of money and expended  
4 significant efforts to promote its RAW line of products and RAW marks. HBI  
5 International’s promotional efforts include, for example, internet advertising, point of  
6 sale materials, sponsorships, contests, and attendance at trade shows. The RAW marks  
7 are prominently featured in advertisements and promotions for RAW products.

8 6. As a result of HBI International’s substantial use and promotion of the  
9 RAW marks, HBI International has acquired great value as an identifier of HBI  
10 International’s products, which serve to distinguish HBI International’s RAW line of  
11 products from those of its competitors. Customers in this Judicial District and elsewhere  
12 readily recognize HBI International’s RAW marks as a distinctive designation of the  
13 origin of HBI International’s RAW line of products. The RAW marks are an asset of  
14 significant value as a symbol of HBI International and its quality products and goodwill.

15 7. Rodawg is in the business of designing, manufacturing, marketing, selling,  
16 and distributing tobacco-related products, including cigarette tubes and cigarette cases.

17 8. The term “rodawg” is slang derived from the phrase “That’s raw, dog!”  
18 which is commonly used by certain segments of HBI International’s customer base as an  
19 affirmative or positive statement.

20 9. Defendant’s use of the term “rodawg” is designed to evoke the word “raw”  
21 in the original phrase, and its use on tobacco-related products is intended to play off of  
22 HBI International’s well-known RAW-related marks.

23 10. Without permission or authority from HBI International, defendant has  
24 infringed upon HBI International’s RAW marks in interstate commerce by making,  
25 using, promoting, advertising, distributing, selling, and offering to sell products under the  
26 brand name “Rodawg” (the “Infringing Mark.”)  
27  
28

1           11. Upon information and belief, defendant's use of the Infringing Mark is  
2 intended to trade upon the goodwill and substantial recognition associated with HBI  
3 International's RAW line of products.

4           12. Upon information and belief, defendant is using the Infringing Mark to  
5 associate themselves with HBI International or otherwise trade upon HBI International's  
6 reputation.

7           13. Upon information and belief, defendant's use of the Infringing Mark is  
8 intended to cause confusion, mistake, or deception.

9           14. Upon information and belief, defendant intends to cause consumers and  
10 potential customers to believe that defendant's products are associated with HBI  
11 International's RAW products when, in fact, defendant's products are not.

12           15. By virtue of the acts outlined herein, defendant has created a likelihood of  
13 injury to HBI International's business reputation, caused both actual confusion and the  
14 strong likelihood of consumer confusion as to the source of origin and of the relationship  
15 of HBI International's and defendant's goods, and has otherwise competed unfairly with  
16 HBI International.

17           16. Upon information and belief, defendant's acts outlined herein are willful  
18 and deliberate.

19           17. Defendant's acts outlined herein have caused damage to HBI International  
20 in an amount to be determined at trial, and such damages will continue to increase unless  
21 and until defendant is enjoined from its wrongful conduct.

22           18. Defendant's acts outlined herein have caused HBI International to suffer  
23 irreparable injury to its business. HBI International will suffer a substantial loss of  
24 goodwill and reputation unless and until defendant is preliminarily and permanently  
25 enjoined from the wrongful actions outlined herein.

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**First Cause of Action**

**(Trademark Infringement and False Designation of Origin)  
(15 U.S.C. § 1125(a))**

19. HBI International realleges and incorporates by reference the above paragraphs of this Complaint as though fully set forth herein.

20. This is an action for trademark infringement and false designation of origin arising under 15 U.S.C. § 1125(a).

21. Defendant created a false designation of origin by using in commerce, without HBI International's permission, marks confusingly similar to HBI International's RAW marks in connection with the advertisement, offering for sale, and sale of defendant's "Rodawg"-branded products. Upon information and belief, defendant did so with the intent to compete against HBI International, to trade upon HBI International's reputation and goodwill by causing consumer confusion and mistake, and to deceive the public into believing that defendant's products are associated with, sponsored by, or approved by HBI International, when they are not.

22. HBI International's RAW marks are non-functional, are inherently distinctive, and have acquired substantial secondary meaning in the marketplace.

23. Defendant's products sold with the Infringing Mark are confusingly similar to HBI International's RAW line of tobacco products. Defendant has infringed upon HBI International's RAW marks and created a false designation of origin by manufacturing, distributing, selling, and promoting in commerce, without HBI International's permission, products containing the Infringing Mark. Upon information and belief, defendant did so with the intent to compete against HBI International, to trade upon HBI International's reputation and goodwill by causing consumer confusion and mistake, and to deceive the public into believing that defendant's products are associated with, sponsored by, or approved by HBI International, when they are not.

24. Upon information and belief, defendant had actual knowledge of HBI International's ownership and prior use of HBI International's RAW marks, and without

1 HBI International's consent, has willfully violated 15 U.S.C. § 1125(a).

2 25. Defendant's aforementioned acts have irreparably injured HBI International  
3 and damaged HBI International in an amount to be determined at trial. Such irreparable  
4 injury will continue unless and until defendant is preliminarily and permanently enjoined  
5 by this Court from further violation of HBI International's rights, for which HBI  
6 International has no adequate remedy at law.

7 **Second Cause of Action**

8 **(Unfair Competition under Arizona Common Law)**

9 26. HBI International realleges and incorporates by reference the above  
10 paragraphs of this Complaint as though fully set forth herein.

11 27. This is an action for common law unfair competition arising under the  
12 common law of the State of Arizona.

13 28. By virtue of the acts outlined herein, defendant has intentionally caused a  
14 likelihood of confusion among the public and has unfairly competed with HBI  
15 International in violation of the common law of the State of Arizona.

16 29. Defendant's willful acts of unfair competition have caused damage and  
17 irreparable injury to HBI International in an amount to be determined at trial.

18 30. Defendant's willful acts of unfair competition under Arizona common law  
19 constitute fraud, oppression, and malice. Accordingly, HBI International is entitled to  
20 exemplary damages.

21 **Prayer for Relief**

22 WHEREFORE, HBI International prays for judgment against Rodawg as follows:

23 A. That the Court enter judgment in favor of HBI International and against  
24 defendant on all causes of action alleged herein;

25 B. That the Court enter judgment that defendant has willfully violated the  
26 provisions of 15 U.S.C. §1125 by infringing upon HBI International's RAW mark  
27 through the marketing, sale, and promotion of products bearing the Infringing Mark;

28 C. That defendant be adjudged to have willfully violated the provisions of 15

1 U.S.C. § 1125 by using false designation of origin, false description, or false  
2 representation in connection with its products;

3 D. That defendant be adjudged to have unfairly competed with HBI  
4 International under the common law of the State of Arizona;

5 E. That defendant, its agents, servants, employees, attorneys, successors, and  
6 assigns, and all other persons in active concert or participation with any of them who  
7 receive actual notice of the injunction by personal service or otherwise, be forthwith  
8 preliminarily and permanently enjoined from:

- 9 1. Using the Infringing Mark in connection with defendant's goods, in  
10 advertising or promoting defendant's goods, and/or using  
11 confusingly similar variations of the RAW marks in any manner that  
12 is likely to create the impression that defendant's goods originate  
13 from HBI International, are endorsed by HBI International, or are in  
14 any way connected to HBI International;
- 15 2. Otherwise infringing upon the RAW marks;
- 16 3. Unfairly competing with HBI International in any manner  
17 whatsoever; and
- 18 4. Causing a likelihood of confusion or injury to HBI International's  
19 business reputation;

20 F. That defendant be directed to file with this Court and serve upon HBI  
21 International within thirty (30) days after the service of the injunction, a report, in  
22 writing, under oath, and setting forth in detail the manner and form in which defendant  
23 has complied with the injunction pursuant to 15 U.S.C. § 1116;

24 G. That defendant be required to account to HBI International for any and all  
25 profits derived by defendant's use of the infringing mark and all damages sustained by  
26 HBI International by virtue of defendant's acts outlined herein;

27 H. That defendant be ordered to pay over to HBI International all damages  
28 which HBI International has sustained as a consequence of the acts outlined herein,

1 subject to proof at trial;

2 I. That HBI International be awarded treble damages pursuant to 15 U.S.C. §  
3 1117;

4 J. That HBI International be awarded exemplary damages from defendant;

5 K. That an award of reasonable costs, expenses, and attorneys' fees be  
6 awarded to HBI International;

7 L. That defendant be required to deliver and destroy all devices, literature,  
8 advertising, goods, and other materials bearing the infringing mark pursuant to 15 U.S.C.  
9 § 1118; and

10 M. That HBI International be awarded such other and further relief as this  
11 Court may deem just.

12 **Jury Trial Demand**

13 HBI International demands a jury trial on all claims that support such a demand.

14 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of December, 2012.

15 **GRAIF BARRETT & MATURA, P.C.**

16  
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